

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Petition for Declaratory Ruling Whether |) | WC Docket No. 08-56 |
| Voice over Internet Protocol Services Are |) | |
| Entitled to the Interconnection Rights of |) | |
| Telecommunications Carriers |) | |
| _____ |) | |

SPRINT NEXTEL REPLY COMMENTS

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Sprint Nextel Corporation (“Sprint”) submits the following reply to the comments filed in this docket and the petition for declaratory ruling filed by the Vermont Telephone Company (“VTel”). The Federal Communications Commission (“Commission” or “FCC”) should deny the VTel petition. As the comments demonstrate, VTel’s petition is without merit and is merely one more example of incumbent local exchange carriers (“LECs”) delaying the entry of competitive services in rural markets.

I. INTRODUCTION AND SUMMARY

Congress enacted the 1996 Act to “promote competition . . . and encourage the *rapid deployment* of new telecommunications technologies.”¹ To achieve these objectives, Congress required incumbent LECs to permit competitors to interconnect with their networks and to negotiate in good faith agreements with new entrants.² Congress further imposed strict deadlines on the resolution of any disputes so as to “accelerate rapidly private sector deployment of advanced

¹ PUB. L. NO. 104-104, 110 State. 56, 56 (1996)(emphasis added).

² See 47 U.S.C. §§ 251, 252.

telecommunications and information technologies and services to *all* Americans,” including those in rural areas.³

Cable broadband networks, and the voice over internet protocol (“VOIP”) services provided over these networks, are examples of the competition Congress sought to promote. As the Illinois Commission noted in rejecting a LEC attempt to thwart this competition and in ordering the incumbent to negotiate in good faith:

Sprint and MCC's [a cable company] interest in competing in certain of the more rural exchanges in Illinois is significant in that it represents one of the first, if not the first, competitive landline ventures into the relevant exchanges.⁴

Before cable VoIP providers can introduce competition, they must interconnect with the public switched telecommunications network (“PSTN”), including with incumbent LECs. This has been a significant hurdle to date, however, because the FCC has not determined whether VoIP providers are telecommunications carriers. As a result, it is unclear whether they have a right under Section 251 of the Act to interconnect with incumbent LECs and under Section 252 to require the incumbent to negotiate or to invoke the statutory arbitration procedure.

Sprint developed a new business model to facilitate the ability of cable companies, large and small, to provide consumers with a competitive alternative to the incumbent’s services. Under this model, Sprint and cable companies combine their resources to furnish VoIP services that enable each of them to enter the market faster than they could have alone. Cable companies provide their “last mile” facilities and deal with consumers, using their marketing, billing and customer services capabilities. Sprint provides, among other things, PSTN interconnection; switch-

³ CONF. REP. NO. 104-458, 104th Cong., 2d Sess. at 1 (Jan. 31, 1996)(emphasis added).

⁴ *Cambridge Telephone*, Docket No. 05-0259, *et al.*, 2005 Ill. PUC Lexis 379 at *29 (July 13, 2005).

ing; number assignment, administration and porting; operator services; directory assistance; and 911 connectivity.

Although the Sprint/cable partnership is entirely consistent with Congress' pro-competitive policies, LECs in many of the 30-plus States in which Sprint has introduced this business model have tried to obstruct its entry. These ILECs, while acknowledging that Sprint has been a telecommunications carrier for over 100 years, have claimed that Sprint is not a telecommunications carrier when it attempts to compete with them through the provision of wholesale services to cable VoIP providers – and that as a result, Sprint cannot invoke its rights under Sections 251-252.

The Commission was compelled to intervene on this issue last year.⁵ In its *Time Warner Order*, the Commission confirmed that (a) wholesale telecommunications carriers like Sprint have interconnection rights, and (b) it is “irrelevant” that these wholesale telecommunications services are provided to VoIP service providers.⁶ In short, the Commission squarely rejected the core LEC argument that carriers like Sprint have no interconnection rights simply because they provide wholesale services to VoIP providers.

The *Time Warner Order* should have fully resolved the matter; after all, the cable business model that Sprint uses in one State is the same model it uses in all States. But the *Order* has not had the effect the Commission had intended. LECs continue to obstruct the ability of Sprint and cable companies to provide a competitive alternative to rural consumers. Moreover, LECs

⁵ Although the *Time Warner Order* was issued by the Chief of the Wireline Competition Bureau, it is noteworthy that no one asked the FCC to review this Bureau order – which suggests that those rural LECs opposing the Sprint/Cable partnership were unable to craft arguments to challenge the Bureau's decision.

⁶ *Time Warner Order*, 22 FCC Rcd 3513, 3520 ¶ 15 (2007).

continue to assert in one State the same arguments that federal courts in other States have consistently rejected.⁷

The recent VTel petition is the latest example of the obstructionist tactics that some LECs are employing to delay competition. VTel asserts that it “welcomes” competition and “works assiduously to fulfill the letter and spirit of all [FCC] rules.”⁸ However, VTel has refused to negotiate with a *certified* carrier even though FCC rules require an incumbent carrier to negotiate with a new entrant even if it holds no State certificate.⁹ VTel not only refused to negotiate, it also refuses to honor customer number porting requests because, it says, the certificated carrier “might not be” a telecommunications carrier.¹⁰ According to VTel, the Vermont Commission’s certificate determination is “secondary” to its right as the incumbent to determine unilaterally when it will permit competition.¹¹

VTel asserts that its refusals to negotiate with, and port numbers to, a certificated carrier are necessary to prevent “harm to the public.”¹² It is understandable that VTel never attempts to explain how the public is harmed by new competitive entry. Rather, as the Vermont Department

⁷ Sprint has been, and continues to be, involved in numerous lawsuits where the issue of its right to interconnect with rural LECs to provide wholesale services to cable VoIP providers is at issue. Sprint has prevailed in each case decided to date. *See, e.g., Iowa Telecommunications Services v. Iowa Utilities Board*, No. 4:06cv0291 JAJ (S.D. Iowa, April 15, 2008); *Consolidated Communications v. Texas PUC*, 497 F. Supp. 2d 836 (W.D. Tex. 2007); *Sprint v. Nebraska PSC*, No. 4:05CV3260, 2007 U.S. Dist. LEXIS 66902 (D. Neb., Sept. 7, 2007); *Berkshire Telephone v. Sprint*, No. 05-CV-6502-CJS, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y., Oct. 30, 2006).

⁸ *See* VTel Petition at 2.

⁹ *See* 47 C.F.R. § 51.301(c)(4).

¹⁰ *See* VTel Petition at 5. *See also* Vermont Department of Public Service Comments at 7-8 (“VTel appears to be refusing to port numbers of Comcast Phone of Vermont, LLC. [The] Department has already received a consumer complaint concerning a VTEL customer’s inability to port his number to Comcast.”).

¹¹ *See* VTel Petition at 3.

¹² *See id.* at 8.

of Public Service makes clear, VTel's obstructionist tactics are "deny[ing] consumers significant competitive choice," which is especially important in rural areas as VTel currently faces "no residential wireline competitors."¹³

Some commenters, in response to the VTel petition, ask the Commission to reaffirm its *Time Warner Order*. Although the holdings in the *Order* are clear and unequivocal, LECs still claim they are "confused" and need "guidance."¹⁴ So as to remove any possible incumbent LEC claim that they are "confused" by current requirements, Sprint urges the Commission to make the following three rulings:

1. An incumbent LEC may not refuse to negotiate with a certificated carrier simply because it thinks the requesting carrier "might not be" a telecommunications carrier;
2. All incumbent LECs, including rural LECs, must negotiate in good faith with a requesting carrier; and
3. An incumbent LEC, upon receipt of a request for interconnection, must provide interim interconnection arrangements and must, among other things, provide number portability and dialing parity.

II. THE COMMISSION SHOULD DISMISS THE VTEL PETITION

VTel asks the Commission to render three declaratory rulings. VTel seeks this action because, it says, there "*seems* to be some confusion and uncertainty in the industry as to the application of the statutory provisions discussed herein to VOIP providers."¹⁵ In fact, there is no confusion or uncertainty at all regarding any of the three issues VTel raises in its petition. The petition is governed "on all fours" by last year's *Time Warner Order* – and it is not surprising perhaps that VTel chose not even to mention this important *Order* in its petition.

¹³ Vermont Department of Public Service Comments at 2.

¹⁴ See VTel Petition at 2.

¹⁵ VTel Petition at 2 (emphasis added).

A. THE FCC HAS NOT DETERMINED THE APPROPRIATE REGULATORY CLASSIFICATION FOR VOIP PROVIDERS

VTel asks the Commission for a “policy clarification” as to whether or not “only ‘telecommunications carriers’ are entitled to interconnection with local exchange carrier (“LEC”) facilities by the express terms of Sections 251 and 252 of the Act.”¹⁶ VTel makes this request even though its petition readily acknowledges that the Commission (a) has made it “abundantly clear that the interconnection, reciprocal compensation and other rights granted by Section 251 apply only to telecommunications carriers;” and (b) has “*not* classified VOIP as a ‘telecommunications service’ or VoIP providers as ‘telecommunications carriers.’”¹⁷

Every commenter addressing the subject agrees that under current rules, the Commission has not determined whether VoIP providers are telecommunications carriers with interconnection rights under Sections 251-252.¹⁸ As AT&T states:

[T]he Act and the Commission are clear on this point: an entity *must* be a telecommunications carrier in order to avail itself of interconnection rights under section 251.¹⁹

The purpose of a declaratory ruling is to “terminate a controversy or remove uncertainty.”²⁰ There is no controversy or uncertainty regarding the interconnection rights of VoIP providers, as VTel’s own petition documents. Accordingly, as Verizon correctly observes, there is “no need for the Commission to issue a declaratory ruling reaffirming the plain text of [the

¹⁶ VTel Petition at 1 and 8.

¹⁷ *Id.* at 4 and 5 (italics in original).

¹⁸ See, e.g., AT&T Comments at 2-3; Bright House Comments at 3-4; Comcast Comments at 4; Embarq Comments at 3-6; FeatureGroup IP Comments at 3 and 7; Independent Telephone & Telecommunications Alliance (“ITTA”) Comments at 2-3; Qwest Comments at 2-3; Verizon Comments at 2-4.

¹⁹ AT&T Comments at 3 (italics in original).

²⁰ 5 U.S.C. § 554(e). See also 47 U.S.C. § 1.2.

Act] and the Commission's prior orders interpreting and applying" the Act.²¹ Indeed, the Commission has repeatedly recognized that a declaratory ruling is "unwarranted" where, as here, there is "no uncertainty to be removed."²²

B. THE FCC HAS NOT CLASSIFIED VOIP PROVIDERS AS TELECOMMUNICATIONS CARRIERS

VTel also asks the Commission to determine "whether or not VoIP providers are entitled to interconnection pursuant to [Sections 251-252] of the Act when they assert they are not 'telecommunications carriers.'"²³ But VTel answers its own question, when it acknowledges that the Commission has "*not* classified . . . VoIP providers as 'telecommunications carriers.'"²⁴ If VoIP providers are not telecommunications carriers (as the FCC has held and as VTel acknowledges), then it is plainly irrelevant whether a particular VoIP provider claims (correctly) it is not a telecommunications carrier. Once again, there is no controversy or uncertainty justifying entry of a declaratory ruling.

C. THE FCC SHOULD NOT OVERTURN VERMONT'S DETERMINATION THAT COMCAST PHONE IS AUTHORIZED TO PROVIDE TELECOMMUNICATIONS SERVICES

VTel finally asks the Commission to determine whether or not "Comcast Phone of Vermont, LLC ("Comcast"), *as a VoIP provider*, is a telecommunications carrier and, therefore, is entitled to interconnection pursuant to those statutory provisions."²⁵ There are several distinct flaws with this VTel request.

²¹ Verizon Comments at 3.

²² *Abundant Life*, 17 FCC Rd 4006, 4008 ¶ 7 (2002). *See also Matinee Radio*, 20 FCC Rcd 13713 (2005) ("Because we find that those rules were clear, we find no controversy or clarification requiring [declaratory] relief."); *Stokes*, 22 FCC Rcd 18895, 18897 ¶ 7 (2007); *Lorillard Tobacco*, 22 FCC Rcd 4917, 4919 ¶ 5 (2007); *Bay Media Group*, 21 FCC Rcd 6967, 6970 ¶ 8 (2006).

²³ VTel Petition at 1 and 8.

²⁴ *Id.* at 5 (italics in original).

²⁵ VTel Petition at 1 and 8 (emphasis added).

First, it is irrelevant to VTel's petition whether Comcast Phone of Vermont is, or is not, a VoIP provider. As VTel acknowledges in its petition, under existing rules, a telecommunications carrier has a right to interconnection whether or not it also provides information services.²⁶ Section 51.100(b) of the Commission's rules provides:

A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.²⁷

Thus, the important question is not whether Comcast Phone of Vermont provides, or does not provide, VoIP services, but rather whether it provides telecommunications services.

Second, VTel recognizes that the Vermont Public Service Board has issued to Comcast Phone a "CLEC certificate," further acknowledging that this certificate is of "significant importance."²⁸ Yet, in its third requested declaratory ruling, VTel now wants this Commission to rule that Comcast Phone is not a telecommunications carrier. In other words, VTel wants the FCC effectively to overturn the Vermont Board's determination that Comcast Phone is authorized to provide telecommunications services in Vermont.

VTel's petition ignores entirely that the Commission has already held that it is "not . . . appropriate" for it to grant the relief VTel seeks:

[W]e do not find it appropriate to revisit any state commission's evidentiary assessment of whether an entity demonstrated that it held itself out to the public sufficiently to be deemed a common carrier under well-established case law.²⁹

²⁶ See VTel Petition at 4, *citing* 47 C.F.R. § 51.100(b).

²⁷ 47 C.F.R. § 51.100(b).

²⁸ See VTel Petition at 2 and 6. The Vermont Board's web site also lists Comcast Phone as a "competing local exchange carrier authorized to operate in Vermont." See www.state.vt.us/psb/utility_listings/ul_clec.htm.

²⁹ *Time Warner Order*, 22 FCC Rcd at 3523 ¶ 17. See also *id.* at 3520 ¶ 14.

The Vermont Board has determined that Comcast Phone of Vermont is a telecommunications carrier and the FCC should, consistent with its precedent, leave these finding undisturbed.

The FCC would be required to deny VTel's third request even if it was willing to disregard its prior ruling in this area. As Verizon explains, "VTel does not provide sufficient information . . . to give the Commission a basis for issuing the declaratory ruling VTel seeks":

For example, in support of its claims about Comcast's alleged statements to the Vermont Public Service Board, VTel attaches a pleading by a different party – the Burlington Electric Light Department – which does not provide a sufficient record on which to base a declaratory ruling.³⁰

Likewise irrelevant to Comcast Phone's status as a telecommunications carrier are the Comcast pleadings and letters involving a *different* Comcast company (Comcast IP Phone II, LLC) that VTel references in passing.³¹

Indeed, the available evidence supports a contrary finding. In a proceeding to which VTel is a party,³² Comcast Phone submitted written testimony demonstrating that it was a telecommunications carrier and not a VoIP provider:

Comcast Phone of Vermont, LLC is a CLEC certified to provide intrastate telecommunications service in Vermont. . . . Comcast Phone of Vermont, LLC is the entity that enters into interconnection agreements with telecommunications carriers for the exchange of traffic [It] is the "partner" CLEC, which provides those services on behalf of its customer (and affiliated entity) Comcast IP Phone II, LLC d/b/a Comcast Digital Voice. . . . Comcast IP Phone II, LLC is an interconnected VoIP provider that delivers the [VoIP] product to the end-user customer, and is subject to the jurisdiction of the [FCC].³³

³⁰ Verizon Comments at 4.

³¹ See VTel Petition at 5-6.

³² See Scheduling Order, *Investigation into Regulation of Voice over Internet Protocol ("VoIP") Services*, Docket No. 7316, n.1 (March 7, 2008).

³³ Prefiled Direct Testimony of David Kowolenko, Docket No. 7316, at 6-7 (April 7, 2008), appended as Exhibit 4 to Comcast's Comments.

VTel chose to ignore this evidence in its petition and simply asserts a contrary representation (Comcast Phone is a VoIP provider) without providing *any* supporting evidence.

D. NTCA PROVIDES NO SUPPORT FOR ITS SUGGESTION THAT THE *TIME WARNER ORDER* DOES NOT GOVERN THE VTel/COMCAST DISPUTE

The National Telecommunications Cooperative Association (“NTCA”), alone among the commenters, suggests that the *Time Warner Order* may not govern the current dispute:

The VTel Petition is distinguishable from previous VoIP interconnection rulings . . . because, for the first time, the Commission is asked whether interconnection rights should flow to an “integrated” (*i.e.*, using its own CLEC services rather than those of a third-party CLEC) VoIP provider that is providing IP-based services.³⁴

Notably absent in NTCA’s comments, however, is any argument or explanation why the *Time Warner Order* does not apply to wholesale telecommunications carriers when they are affiliated with a VoIP provider.

In fact, as Time Warner explains, it makes “no difference” whether the wholesale carrier seeking interconnection is “affiliated or unaffiliated with the retail VoIP provider”:

Nothing in the *TWC Interconnection Order* or any other ruling suggests that affiliation has any bearing on the rights at issue. To the contrary, the only relevant issue concerns the *nature of the services* offered by the wholesale provider – *i.e.*, whether it offers telecommunications services” – as opposed to the *identity of the wholesale provider’s customers* (or the nature of the services *they* provide).³⁵

As a matter of policy, NTCA’s apparent position is nonsensical. Why should VoIP providers be precluded from doing directly (*i.e.*, partner with an *affiliated* wholesale telecommunications carrier) what they can do indirectly (*i.e.*, partner with an *unaffiliated* wholesale telecommunications carrier like Sprint)? Indeed, the Commission has already recognized that one firm

³⁴ NTCA Comments at 5.

³⁵ Time Warner Comments at 4 (italics in original).

can provide both telecommunications and VoIP services – or in NTCA’s words, provide telecommunications and VoIP services on an “integrated” basis.³⁶

III. THE COMMISSION SHOULD PROVIDE GUIDANCE SO INCUMBENTS CANNOT CLAIM IN THE FUTURE THAT THEIR INTERCONNECTION OBLIGATIONS ARE UNCLEAR

The *Time Warner Order* is clear: incumbent LECs must interconnect with a telecommunications carrier even though it provides its wholesale services to a VoIP provider. VTel nonetheless claims it finds it “difficult . . . to clearly understand how it should fulfill its own obligations.”³⁷ It therefore asks the Commission to “assist VTel in understanding how best to fulfill the letter and spirit of the FCC’s requirements.”³⁸ Sprint below identifies several steps the Commission should take to ensure that no incumbent LEC can reasonably assert in the future that its interconnection obligations are unclear.

A. THE COMMISSION SHOULD CONFIRM THAT AN INCUMBENT LEC MAY NOT REFUSE TO NEGOTIATE WITH A STATE CERTIFIED CARRIER

VTel has refused even to discuss interconnection with Comcast Phone of Vermont because, it claims, Comcast Phone “might not be” a telecommunications carrier.³⁹ VTel holds this view even though, of “significant importance,” the Vermont Board has issued a “CLEC certifi-

³⁶ See *VoIP Porting Order*, 22 FCC Rcd 19531, 1550 n.117 (2007)(“To the extent an interconnected VoIP provider is certificated or licensed as a carrier, then the Title II LNP obligations to port-in or port-out to the carrier area is already determined by existing law.”).

³⁷ VTel Petition at 7.

³⁸ *Id.* at 8.

³⁹ See *id.* at 5. See also Vermont Department of Public Service Comments at 7 (“VTEL has communicated to the Department a position that it is not required to provide the items contained in Comcast Phone of Vermont LLC’s Interconnection Request, and has to date, declined to enter into any discussions with Comcast about an agreement under Section 251.”).

cate” to Comcast Phone.⁴⁰ The Commission should clarify that a LEC may not refuse to negotiate with a carrier that has obtained a State CLEC certification.

Section 51.301(c)(4) of the Commission’s rules specifies that an incumbent LEC engages in bad faith if it refuses to negotiate an interconnection agreement until the competitive carrier “first obtain[s] state certification.” The Commission adopted this rule because such a precondition to negotiations is “deliberately intended to delay competitive entry, in contravention of the statute’s goals.”⁴¹ If an incumbent LEC engages in bad faith by refusing to negotiate with a firm that has no state certificate, the incumbent necessarily engages in bad faith if it refuses to negotiate with a firm that has already obtained a state certificate.

VTel counters that it is free ignore the Vermont Board’s action because a certificate “*appears* to be secondary to the threshold question of whether a VoIP service is a telecommunications service.”⁴² This explanation makes no sense, given VTel’s own recognition that the FCC has “*not* classified VoIP as a ‘telecommunications service.’”⁴³ As the Commission stated in the *Time Warner Order*, it is “irrelevant” that the telecommunications carrier requesting interconnection intends to use the interconnection in the provision of wholesale services to VoIP providers.⁴⁴

In order to ensure that obstructionist tactics like those VTel has utilized here are not repeated in the future by other incumbent LECs, the Commission should confirm that (a) a state certificate is *prima facie* evidence that the requesting carrier is a telecommunications carrier, and

⁴⁰ See VTel Petition at 6.

⁴¹ *Local Competition Order*, 11 FCC Rcd 15499, 15577 ¶ 154 (1996).

⁴² VTel Petition at 3(emphasis added).

⁴³ *Id.* at 5 (italics in original).

⁴⁴ *Time Warner Order*, 22 FCC Rcd at 3520 ¶ 15.

(b) the incumbent, upon receiving an interconnection request from a certificated carrier, must immediately commence negotiations with such a carrier

B. THE COMMISSION SHOULD CONFIRM THAT RURAL LECs ARE REQUIRED TO NEGOTIATE IN GOOD FAITH WITH ALL REQUESTING CARRIERS

Some rural LECs have taken the position that they need not negotiate in good faith with firms requesting interconnection negotiations. They reason that because Congress placed the good faith negotiation requirement in Section 251(c), they are exempt from this requirement under the Section 251(f) rural exemption. In other words, these incumbents want the Commission to believe that while Congress required rural LECs to negotiate interconnection agreements, and while Congress made clear that requesting carriers must negotiate in good faith,⁴⁵ they remain free to negotiate in bad faith – and can, among other things, deny they must provide dialing parity or number portability even though Section 251(b) explicitly imposes these obligations on rural LECs.

Of course, Congress did not intend such an absurd result. Rural LECs claiming a right to negotiate in bad faith also fail to acknowledge FCC Rule 51.301(a), which provides:

An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251 (b) and (c) of the Act.

While rural LECs possessing rural exemptions are exempt from the requirements of Section 251(c), they are not exempt from the duties imposed by Section 251(b).⁴⁶ Thus, FCC Rule

⁴⁵ See 47 U.S.C. § 251(c)(1)(A) (“The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.”); 47 C.F.R. § 51.302(b) (“A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.”).

⁴⁶ See, e.g., *First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7304 ¶ 119 (1997) (“[T]he requirements of Section 251(b) apply to a rural LEC even if Section 251(f)(1) exempts such LECs from a concurrent Section 251(c) requirement.”).

51.301 requires rural LECs to negotiate in good faith their interconnection obligations contained in Section 251(b).

The Commission should confirm all telecommunications carriers – including rural LECs – must negotiate in good faith. The Commission should further confirm that this good faith negotiation requirement includes the duty to commence meaningful negotiations promptly following a receipt of a request for interconnection.

C. THE COMMISSION SHOULD MAKE CLEAR THAT INCUMBENT LECs MUST PROMPTLY PROVIDE INTERIM INTERCONNECTION

The Commission should also confirm what its rules already explicitly provide: “Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC *shall* provide transport and termination of telecommunications traffic immediately under an interim arrangement.”⁴⁷

Section 251(b) imposes certain obligations on LECs; for example, Section 251(b)(2) imposes the “duty to provide . . . number portability in accordance with the requirements prescribed by the Commission.”⁴⁸ The Commission has made clear that a LEC like VTel “*must* port-out a NANP telephone number to . . . an interconnected VoIP provider that partner with a wireline carrier for numbering resources.”⁴⁹ The Commission has further held that it is consumers who hold “the right to port-in the number to an interconnected VoIP service” and that the porting out carrier has “an affirmative legal obligation to take all steps necessary” to implement a customer’s port request, “without unreasonable delays.”⁵⁰ The Commission determined that requiring LECs

⁴⁷ 47 C.F.R. § 51.715(a)(emphasis added).

⁴⁸ 47 U.S.C. § 251(b)(2).

⁴⁹ *VoIP Number Porting Order*, 22 FCC Rcd 19531, 19550 ¶ 35 (2007)(emphasis added).

⁵⁰ *See id.* at 19548-49 ¶¶ 31-32.

to port numbers to interconnected VoIP providers “enhance[s] competition, a fundamental goal of Section 251 of the Act.”⁵¹

VTel states that it “welcomes” competition and “works assiduously to fulfill the letter and spirit of all [FCC] rules.”⁵² Yet, although the FCC has explicitly ruled that LECs like VTel “must” port out numbers to VoIP providers, VTel has refused to honor customer requests to port their numbers to a VoIP competitor. A Vermont consumer agency reports:

VTEL appears to be refusing to port numbers to Comcast Phone of Vermont, LLC. That the Department has already received a consumer complaint concerning a VTEL customer’s inability to port his number to Comcast underscores that Vermonters are ready for new VoIP services.⁵³

VTel will no doubt contend, like other LECs before it, that it need not comply with the Act and FCC rules until a final interconnection agreement exists with a competitive carrier.⁵⁴ But the situation here is much worse, since VTel is refusing even to discuss interconnection with Comcast Phone.⁵⁵ Thus, VTel is taking the position that it can delay complying with its clear interconnection obligations simply by refusing to negotiate an agreement – which, in turn, delays the date that a final agreement can be executed and which under VTel’s position, delays the date that VTel finally complies with the requirements of the Act and FCC rules.

⁵¹ *Id.* at 19540 ¶ 17.

⁵² VTel Petition at 2.

⁵³ Vermont Department of Public Service Comments at 7.

⁵⁴ *See* Interior Telephone Petition for Declaratory Ruling, WC Docket No. 07-102, at 14 (May 3, 2007)(“Interconnection occurs at the end of that [negotiation/arbitration] process.”).

⁵⁵ *See* Vermont Department of Public Service Comments at 7 (“VTEL has communicated to the Department a position that it is not required to provide the items contained in Comcast Phone of Vermont LLC’s Interconnection Request, and has to date, declined to enter into any discussions with Comcast about an agreement under Section 251.”).

There should be no confusion regarding the obligations of incumbent LECs. After all, the Commission has already addressed this subject through the adoption of an interim interconnection rule. Rule 51.715(a) states unequivocally:

Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC *shall* provide transport and termination of telecommunications traffic immediately *under an interim arrangement*.⁵⁶

The Commission has further specifically held that LECs may “not unilaterally require interconnection agreements prior to intermodal porting.”⁵⁷ Yet, VTel has chosen to ignore these requirements, despite its representations that it “welcomes” and fully supports” competition and that it “works assiduously to fulfill the letter and spirit of all [FCC] rules.”⁵⁸

The Vermont Department of Public Service has asked the Commission to issue an “interim decision clarifying that during the pendency of this proceeding, VTEL must comply with the Federal and state law requiring interconnection and number porting.”⁵⁹ Sprint supports this position. But the Commission should further make it clear for all incumbent LECs that upon receipt of an interconnection request, they “shall provide” interconnection under “an interim arrangement.”

IV. THE COMMISSION SHOULD EXPEDITIOUSLY DECIDE THE VTEL PETITION TO PROTECT THE CONSUMER INTEREST IN RECEIVING NEW COMPETITIVE SERVICES AND PORTING NUMBERS

Sprint urges the Commission to promptly address the VTel petition so consumers in VTel’s service area are no longer unreasonably deprived of the option of using VoIP services.

⁵⁶ 47 C.F.R. § 51.715(a)(emphasis added).

⁵⁷ *Intermodal Porting Order*, 18 FCC Rcd 23697, 23711 ¶ 34 (2003). Although this decision was made in the context of LEC/wireless porting, the applicable law and rationale applies equally well to LEC/VoIP porting.

⁵⁸ See VTel Petition at 2.

⁵⁹ Vermont Department of Public Service Comments at 8.

Congress' goal in the 1996 Act, the Commission has declared, was to "enabl[e] swift market entry by new competitors."⁶⁰ Comcast Phone of Vermont made an interconnection request of VTel five months ago, on January 10, 2008.⁶¹ Had VTel negotiated with Comcast, the parties might have agreed to an interconnection agreement by now. Even if they could not agree voluntarily to an agreement, one (or both) of them would have already filed arbitration petitions, and the Vermont Public Service Board would be required to issue its decision by October 10, 2008.⁶²

In addition, had VTel provided interim interconnection as FCC rules require, Comcast would already be providing its VoIP services and VTel would not have rejected its customers' requests to port their numbers to Comcast's new services. None of these desirable conditions is occurring because of VTel's obstructionist tactics – specifically, its refusal to negotiate at all with Comcast Phone and its refusal to honor customer requests to port their numbers.

As the Vermont Department of Public Service correctly notes, the mere pendency of the VTel petition is "reducing the competitive options for local telephone service in Vermont":

VTel appears to be using the existence of this docket to create a barrier to competition. The Department first and foremost is concerned that this pending docket is being used to deny consumers significant competitive choice for telecommunications. Presently, . . . there are effectively no residential wireline competitors operating in VTel's ILEC service territory. Comcast . . . is the only cable operator with a presence in the VTel ILEC service territory.⁶³

Thus, the longer the VTel petition remains pending, the longer it will be before consumers in VTel's service area enjoy any wireline competitor to VTel's services. So as to minimize the

⁶⁰ *Local Competition Order*, 11 FCC Rcd 15499, 15570 ¶ 141 (1991).

⁶¹ *See* VTel Petition at 2.

⁶² Under 47 U.S.C. § 252(b)(4)(C), State commissions must resolve arbitration issues "not later than nine months after the date on which the [LEC] received the request," or in this case, by October 10, 2008.

⁶³ Vermont Department of Public Service Comments at 2.

consumer harm that VTel has caused, the Commission should expeditiously reject VTel's petition.

V. CONCLUSION

For the foregoing reasons, Sprint respectfully requests that the Commission deny the VTel petition and take the additional actions described above.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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